

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Buchanan Analyst: Deborah Barrett Bill Number: AB 1161
Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: February 27, 2009
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Employment/Adverse Actions Against Excluded Employees Must Commence Within One Year Of Cause For Discipline

SUMMARY

This bill would shorten the time to serve an adverse action against excluded state employees from three years to one.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to streamline adverse actions on state excluded employees, to reduce potential legal fees, and to provide a quicker conclusion to the adverse action process.

EFFECTIVE/OPERATIVE DATE

**This bill would be effective and operative January 1, 2010, and would be interpreted by the department to apply to a cause for discipline occurring on or after that date. *

POSITION

Pending.

ANALYSIS

STATE LAW

The California Civil Service Act within the Government Code establishes procedures for taking disciplinary actions, called adverse actions, by the State Personnel Board. The Act provides a statute of limitations of three years to serve an adverse action on state employees. If the action is not served within three years after the cause for discipline, the action is deemed invalid. In a case where the adverse action is due to fraud, embezzlement, or falsification of records, the notice of adverse action must be served within three years after the discovery of the misconduct. Adverse actions served within the statute of limitations can result in dismissal, demotion, or reassignment.

Board Position:

_____ S _____ NA _____ NP
_____ SA _____ O _____ NAR
_____ N _____ OUA X PENDING

Department Director

Date

Selvi Stanislaus

06/02/09

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Any Franchise Tax Board (FTB) employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony. If the unauthorized disclosure involves the use of a state computer, it may be prosecuted as a felony. In addition, FTB may take disciplinary action against an employee who makes an unauthorized disclosure.

THIS BILL

This bill would revise the statute of limitations for filing an adverse action on any state managerial employee, state confidential employee, or state supervisory employee from an occurrence based SOL to a discovery based SOL. Namely, the bill would replace the current three years from the date of occurrence SOL with a one year from the date of discovery of the cause for discipline SOL.

In the case of an adverse action based on fraud, embezzlement, or falsification of records, this bill would require the notice of adverse action to be served within three years from the date of discovery of the misconduct.

PROGRAM BACKGROUND

As part of its efforts to assure that confidential taxpayer information is secure, FTB serves adverse actions for unauthorized access to confidential taxpayer information as necessary. Confidential taxpayer information received by FTB is regulated under the Information Practices Act, the Public Records Act, the Revenue and Taxation Code, and federal laws, all of which protect the privacy of an individual's information. To that end, the department conducts periodic systems audits to identify instances of inappropriate or unauthorized access to confidential taxpayer information and employee information. Frequently the technique used to identify an inappropriate access is an analysis that discovers a pattern of inappropriate access, such as multiple accesses of the same taxpayer's account or access of multiple taxpayers living on the same block. Such audits may reveal a pattern of inappropriate accesses that occurred over a period of years or related misconduct such as identity theft or misuse of taxpayer information. It is common for these unauthorized accesses to span a period greater than one year. These audits contribute to protecting the confidentiality and integrity of the department's information systems, networks, and data. In general, an adverse action for inappropriate access results in actions ranging from suspension to dismissal.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

It is unclear whether the bill's provisions are operative for a cause of discipline occurring on or after the effective date or whether it is operative for adverse actions filed on or after the effective date of the bill for causes of discipline occurring before that date. The department interprets the provisions of this bill to be operative for a cause of discipline occurring on or after January 1, 2010. It is recommended that the language be clarified to prevent disputes between employees and the department.

LEGISLATIVE HISTORY

SB 870 (Ridley Thomas 2007/2008) would have shortened the time to serve an adverse action against an excluded state employee from three years to one year. These provisions were amended out of the bill on August 19, 2008, and replaced with provisions related to the California Housing Finance Agency regulations and rules.

OTHER STATES' INFORMATION

A comparison with other states would not be meaningful as this bill pertains to administrative procedures that are specific to California.

FISCAL IMPACT

This bill would not significantly impact department costs.

ECONOMIC IMPACT

The provisions of this bill would not impact state income tax revenue.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Deborah Barrett
(916) 845-4301
deborah.barrett@ftb.ca.gov

Revenue Director
Jay Chamberlain
(916) 845-3375
jay.chamberlain@ftb.ca.gov

Legislative Director
Brian Putler
(916) 845-6333
brian.putler@ftb.ca.gov